



**city of eagan**

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November 10, 1997

Mr. William Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140

Dear Chairman Kennard:

The purpose of this letter is to express our opposition to any reduction of local zoning authority under the above referenced proceedings. The proposals under consideration in these proceedings attempt to make the Federal Communications Commission (FCC) the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and the principles of Federalism.

Congress and the courts have long recognized that zoning is a local concern. The FCC has no zoning knowledge, nor expertise, and is not accessible to most citizens. For these reasons, and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Communications Act. Now the FCC is trying to usurp this jurisdiction in this area by issuing rules which improperly infringe on local zoning authority. Therefore, it is important that you understand our concerns in the following matters related to aforementioned proceedings.

1) The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items not on the agenda. This is part of the function of local government. Some of our citizens may be concerned about radiation from cellular antennas. We cannot prevent them from mentioning their concerns to us. The Commission's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Freedom of Speech, and the rights of our citizens to petition their government.

THOMAS EGAN  
Mayor

PATRICIA AWADA  
BEA BLOMQUIST  
SANDRA A. MASIN  
THEODORE WACHTER  
Council Members

THOMAS HEDGES  
City Administrator

E. J. VAN OVERBEKE  
City Clerk

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- 2) The FCC should not "second guess" nor question the reasons for a municipality's decision when it is based on public safety, property values or aesthetics. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a local government's true reasons any more than the courts can "second guess" the true reasons for the FCC's decisions.
- 3) The Commission's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that moratoria are a well recognized zoning tool. More importantly, Congress denied the FCC's authority over cellular tower zoning -- this includes the use of moratoria.
- 4) Similarly, the FCC's proposed rulemaking preempting local zoning of broadcast towers must be terminated. As you well know, broadcast towers can be over 2,000 feet high. This is taller than Sears Tower in Chicago! It is astonishing that the Commission would propose that municipalities can not consider the impact of such towers on property values, the environment or aesthetics, and that even safety considerations take second place. Safety always has to be the first priority. Setting artificial time limits for local governments to act on environmental, zoning building permit approvals for such towers serves no useful purpose. It is a violation of the US Constitution and the Communications Act for the FCC to propose time limits for municipalities to act on all local approvals, even if the application is incomplete or violates state or local law.

For these reasons the proposed actions violate the Communications Act and the Constitution and should be given no further consideration.

Sincerely,

  
Tom Egan  
Mayor

cc: Mr. William F. Caton, Acting Secretary, FCC (6 copies)  
Senator Rod Grams  
Senator Paul Wellstone  
Congressman Bill Luther

TAE/vmd